

# Supreme Court of the United States

OCTOBER TERM, 1966

No. 252

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HARVEY LYLE ENTSMINGER, PETITIONER

vs.

IOWA

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ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF IOWA

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**"IN THE DISTRICT COURT OF IOWA, IN AND FOR  
POLK COUNTY**

**THE STATE OF IOWA**

*against*

**HARVEY LYLE ENTSMINGER, DEFENDANT**

**INFORMATION FOR UTTERING A FORGED INSTRUMENT  
Sworn to Sept. 14, 1964**

Comes now Edward R. Fitzgerald, First Assistant County Attorney of Polk County, State of Iowa, and in the name and by authority of the State of Iowa, accuses HARVEY LYLE ENTSMINGER of the crime of UTTERING A FORGED INSTRUMENT, as defined in Section 718.2 of the 1962 Code of Iowa,

Committed as follows:

The said HARVEY LYLE ENTSMINGER on or about the 29th day of May, A. D. 1964, in the County of Polk and State of Iowa, uttered and published as true and genuine a forged instrument in writing purporting to be a bank check, it being in words and figures as follows, to-wit:

**"CAPITAL CITY STATE BANK**

**33-7**

**713**

**DES MOINES, IOWA May 29 1964 No. —**

**PAY TO THE**

**ORDER OF**

**H. P. Entsminger**

**\$67.20**

**Sixty Seven**

**20/100 DOLLARS**

**FOR Dry Wall**

**RON WOODS"**

On the back of said check is endorsed the following:

**"H ENTSMINGER  
NORRIS J. FOGUE"**

Contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Iowa.

/s/ Edward R. Fitzgerald  
First Assistant  
County Attorney.

STATE OF IOWA, Polk County, ss.

I, Edward R. Fitzgerald, being first duly sworn, do depose and say, that I have made full and careful investigation of the facts upon which the above charge is based, and that the allegations contained in the above and foregoing information are true, as I verily believe.

/s/ Edward R. Fitzgerald

Subscribed and sworn to by Edward R. Fitzgerald before me, the undersigned this 14 day of Sept., A. D. 1964.

/s/ Beryl Lang, Dep. Clerk."  
Notary Public in and for  
Polk County, Iowa.



IN THE DISTRICT COURT OF POLK COUNTY

"STATE OF IOWA

vs.

HARVEY LYLE ENTSMINGER

SUMMARY OF TESTIMONY

W. E. MAROHN testified

That he is a Detective of the Des Moines Police Department; that the following-described check was received at Morris J. Fogue's, 6804 S.W. 17th Street and returned from the bank marked "Signature Not as on file"; that the check is on the Capital City State Bank, Des Moines, Iowa, dated May 29, 1964, pay to the order of H. P. Entsminger the sum of \$67.20, marked For Dry Wall, signed Ron Woods, indorsed on the back H Entsminger and Norris J Fogue; that Harvey Entsminger was arrested in connection with this case and admitted that he had been drinking for some time and had passed several checks in the city; that he was recently released from the Fort Madison penitentiary for a previous check charge; that charges of Uttering a Forged Instrument were filed against Harvey Lyle Entsminger in this case.

BILL J. BOYER testified

That his name is Bill J. Boyer, and he is Assistant Cashier and Head Teller of the Capital City State Bank; that he has before him a check drawn on the Capital City State Bank, Des Moines, Iowa, dated May 29, 1964, pay to the order of H P Entsminger the sum of \$67.20, marked For Dry Wall, signed Ron Woods, slip attached marked "Signature not as on file", indorsed H Entsminger and Norris J Fogue; that he has compared the signature on this check to that in their files at the bank, but this is not the authorized signature; that he believes this was one of the first checks to come in; that he was unable to get ahold of the account by telephone, so the check was re-

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turned "signature not as on file; that when several more checks came in, he was able to get ahold of him by telephone, and the man came down to the bank; that they checked it out and it definitely was not his signature; that it looks like the bank would have received the above-described check on or about June 3, 1964.

SCOTT E. WRIGHT, JR. testified

That his name is Scott E. Wright, Jr. and he is employed at the Norris DX Service Station located at 1326 Army Post Road; that this station is managed by Morris J. Fogue; that he has before him a check on the Capital City State Bank, Des Moines, Iowa, dated May 29, 1964, pay to the order of H P Entsminger the sum of \$67.20, marked "For Dry Wall", signed Ron Woods, slip attached marked, "Signature not as on file", indorsed on the back H Entsminger and Norris J Fogue; that Harvey Lyle Entsminger came into the station and had his tank filled on his car, and he put in a quart or two of oil; that Mr. Entsminger gave him this check, and he gave the balance of the check to Mr. Entsminger in cash; that he would be able to identify this man if he saw him again; that this check was later returned from the bank because of the signature on the check.

[fol. 3] NORRIS J. FOGUE testified

That his name is Norris J. Fogue and he operates a DX service station located at 1326 Army Post Road; that he has before him a check drawn on the Capital City State Bank, Des Moines, Iowa, dated May 29, 1964, pay to the order of H P Entsminger the sum of \$67.20, marked For Dry Wall, signed Ron Woods, slip attached marked "Signature not as on file", indorsed on the back H Entsminger and Norris J Fogue; that the second of these is his indorsement on the check; that he then deposited the check in his bank account, and the check was subsequently returned to him in the normal course of business marked "Signature not as on file".

RONALD E. WOODS testified

That his name is Ronald E. Woods and he resides at 1106 West Street; that he is employed at Dean's Phillips 66

station located at 10th and University; that he has before him a check drawn on the Capital City States Bank pay to the order of H P Entsminger the sum of \$67.20 dated May 29, 1964, marked For Dry Wall, signed Ron Woods, slip attached marked "Signature not as on file", indorsed on the back H Entsminger and Norris J Fogue; that this is not his signature on the check; that on May 29, 1964, he did not know a Harvey Lyle Entsminger, and he did not have his permission to write his name on this check and no one else had such permission; that they had a checking account in the Capital City State Bank, but after this difficulty they closed the account.

**DUANE L. BARTON testified**

That he is a special agent of the Iowa Bureau of Criminal Investigation; that he has a check dated May 29, 1964, drawn on the Capital City State Bank, Des Moines, Iowa, made payable to H P Entsminger the sum of \$67.20, drawn by Ron Woods, indorsed H Entsminger and Norris J Fogue; that he has examined this particular check and compared it against the handwriting admittedly written by Harvey Entsminger that is in the possession of Lt. Dawson of the Des Moines Police Department and, in his opinion, Harvey Entsminger did author this check, both face and indorsement.

[fol. 3a] **C. DAWSON testified**

That he is a member of the Des Moines Police Department, Identification Bureau; that he has a check drawn on the Capital City State Bank, Des Moines, Iowa, dated May 29, 1964, pay to the order of H. P. Entsminger in the amount of \$67.20 marked for Dry Wall and signed Ron Woods and endorsed on the back H. Entsminger; that Harvey Lyle Entsminger refused to give them a sample of his handwriting when he was processed through the Identification Bureau; that the check charge was filed on him and he had a hearing in Municipal Court; that he had another check in the file and W. E. Marohn filed another charge on him at that time and did bring him down to the booking room again; that during that day, he showed them what he called legal papers that he was

going to file against several people, including the Police Department, Deputy Sheriffs, and the Sheriff and said he wrote them out in his own handwriting; that they asked him the question twice if that was his handwriting and he said it was; that he conferred with the County Attorney's Office and they advised that he would be able to hold this to check as handwriting; that he told him what they were going to do with these papers and he said that was all right, he would write some more the next day; that he examined and compared the face of the check and the endorsement on the check with the known handwriting of Harvey Lyle Entsminger, and in his opinion, he did write the check and the endorsement."

[fol. 4]

#### SUMMARIZATION OF STATEMENT AND INSTRUCTIONS

##### "STATEMENT

"On the 14th day of September, 1964, the County Attorney of Polk County, Iowa, filed an information against Harvey Lyle Entsminger accusing him of uttering a forged instrument as defined in Section 718.2 of the 1962 Code of Iowa, and charging that Harvey Lyle Entsminger uttered and published as true and genuine a forged instrument purporting to be a bank check.

##### SUMMARIZATION OF INSTRUCTIONS NOS. 1 THROUGH 5

"To this information the defendant has entered a plea of not guilty, and upon the issues thus joined you are instructed as follows:"

Instruction No. 1, stating that the burden of proving guilt rests upon the State.

Instruction No. 2, stating that the defendant could be convicted only upon evidence given in court, and that the information, arrest, and prosecution were not to be taken as proof or presumption of guilt.



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Instruction No. 3, explaining that the State had to overcome the presumption of innocence and to establish guilt beyond a reasonable doubt, and describing in detail what constitutes a reasonable doubt.

Instruction No. 4, defining "burden of proof" and "evidence."

Instruction No. 5, defining the words "wilfully," "unlawfully," and "feloniously."

[fol. 5]

#### INSTRUCTION NO. 6

"A statute of this State provides that if any person utter and publish as true an instrument in writing, to-wit, a bill of exchange, knowing it to be false, with intent to defraud, he shall be punished as in said statute provided. A check is a bill of exchange drawn on a bank payable on demand."

[fol. 6]

#### INSTRUCTION NO. 7

"The burden of proof in this case is upon the State to establish the guilt of the defendant, Harvey Lyle Entsminger, and in order to convict said defendant of the crime of uttering a forged instrument it is necessary that the State establish beyond a reasonable doubt each and all of the following propositions, to-wit:

1. That Harvey Lyle Entsminger did utter and publish as true and genuine the check introduced in evidence as Exhibit A to Norris D.X. Service Station in Polk County, Iowa.

2. That said check was a false and forged check in this that the signature Ron Woods on the face of the check as maker was a forged signature.

3. That at said time of uttering and publishing said check, Exhibit A, the defendant, Harvey Lyle Entsminger, knew said check was false and forged and that the same was uttered and published with intent to defraud.

"If you find that the State has established each and all of the foregoing propositions beyond a reasonable doubt then it will be your duty to find the defendant, Harvey



Lyle Entsminger guilty of the crime of uttering a forged instrument as charged in the information herein. But if you fail to so find as to any one of the above propositions you should find said defendant not guilty."

[fol. 7]

# INSTRUCTION No. 8

"To utter, within the meaning of the statute, is to deliver or pass to another a false or forged written instrument as true and genuine. A forged check as applied to this case may be defined as a check which purports to have been signed as maker by any certain person, when in fact the same was not so signed by such person but was signed by some person other than the one whose name actually appears on the instrument as maker, and without authority from the person whose name appears thereon as maker.

"As applied to this case, if you find from the evidence that Harvey Lyle Entsminger did in fact deliver or pass the check in question in this case, Exhibit A, knowing the signature thereon, "Ron Woods" was not genuine, and with intent on the part of Harvey Lyle Entsminger to receive money therefor, then you would be justified in finding that said check was uttered and published to the said Norris D.X. Station with intent to defraud. Otherwise not."

[fol. 8]

## SUMMARIZATION OF INSTRUCTIONS 9-10-11-12 AND 13

Instruction No. 9, stating that direct proof is not required of intent, and that intent may be inferred from acts as disclosed by the evidence.

Instruction No. 10, cautioning the jury to receive testimony with regard to verbal statements with great caution.

Instruction No. 11, explaining that it was for the jury to determine how much weight should be given to expert testimony, and explaining the factors the jury may consider in weighing the testimony, including whether other evidence establishes facts stated in hypothetical questions.

Instruction No. 12, explaining that the value of opinions as to personal identity depended upon the extent of knowledge of the witness, the opportunity for observation, and the circumstances surrounding the transaction.

Instruction No. 13, explaining the difference between direct evidence and circumstantial evidence, and stating that, in order to convict on circumstantial evidence, the circumstances must produce a moral certainty, and not merely render probable the guilt of the accused.

[fol. 9]

#### INSTRUCTION No. 14

"There has been introduced into evidence in this case, as Exhibits I and J on the part of the State of Iowa, certain handwriting claimed by the State to have been written by the Defendant, Harvey Lyle Entsminger.

"You are instructed that Exhibits I and J were allowed into evidence for the limited purpose of demonstrating the handwriting contained therein and that only the handwriting as such and not the subject matter contained in said Exhibits may be considered as evidence.

"If you find that the handwriting in said Exhibits was done by the Defendant, Harvey Lyle Entsminger, you may give the handwriting such weight as you may determine. If not, you must disregard said Exhibits."

[fol. 10]

#### SUMMARIZATION OF INSTRUCTIONS NOS. 15 THROUGH 18

Instruction No. 15, stating that the jury, in evaluating the defendant's testimony, might take into consideration the defendant's interest in the outcome of the case, but that all the facts and circumstances in evidence should be taken into consideration in attaching weight to the testimony; and charging the jury to consider evidence of previous conviction of felonies only for the purpose of determining credibility of the witness.

Instruction No. 16, stating that the court did not intend at any time to give any opinion as to the facts

or as to what the verdict should be, and that the jury should disregard all matters extraneous to the evidence at arriving at a verdict.

Instruction No. 17, explaining that the jury could evaluate credibility of witnesses and giving the jury some of the factors to be considered in evaluating credibility.

Instruction No. 18, explaining in general the duty of jurors to ascertain the facts according to the law as charged by the court.

\* \* \*

[fol. 11] INSTRUCTION No. 19.

"Herewith you will find two forms of verdict.

You will use that form which accords with your finding, sign the same by one of your number as foreman, and return with it into open court.

/s/ Dring D. Needham"  
Judge.

[fol. 12]

#### NOTE RE LETTER FROM PETITIONER TO COURT

The following letter from petitioner to the Court, sent after verdict but before pronouncement of sentence:

"Judge Needham: Your honor I have only one week left before sentence is posted on me, and I would like to file a motion for new *trial*. Would you appoint a lawyer to help me on this matter. Thank you. Harvey L. Entsminger."

\* \* \*

[fol. 13]

IN THE DISTRICT COURT OF POLK COUNTY

# SUBPOENA

~~Subpoena—State Time~~ (Original) Koch Brothers;  
Des Moines

STATE OF IOWA )  
 ) ss.  
POLK COUNTY )

**THE STATE OF IOWA, To Bill J. Boyer, c/o Capital City State Bank, E. 5th & Locust, Des Moines, Iowa; Ronald E. Woods, 1106 West Street, Des Moines, Iowa**

**You are hereby commanded to appear before the District Court of said County at the Court House in Des Moines, Iowa, at nine o'clock A. M., on the 2nd day of October A. D., 1964 to give evidence in a case between the STATE OF IOWA, plaintiff and Harvey Lyle Entsminger defendant, on the part of said Plaintiff and this you shall in no wise omit, under the penalty of the law.**

WITNESS /s/ Michael H. Doyle Clerk of Said Court with  
the seal thereof hereunto affixed at Des Moines, in said  
County, this 30th day of September 1964

**MICHAEL H. DOYLE, JR., Clerk**

By /s/ Beryl Lang Deputy  
Co Atty



[fol. 14]

## NOTE RE ADDITIONAL SUBPOENAS

A subpoena identical to the above except addressed to: "W. E. Marohn, Des Moines Police Department; Duane L. Barton, Iowa Bureau of Criminal Investigation; C. Dawson, Des Moines Police Department Identification Bureau."

A subpoena identical to the above except addressed to: "Scott E. Wright, Jr., c/o Norris DX Service Station, 1326 Army Post Road, Des Moines, Iowa; Norris J. Fogue c/o Norris DX Service Station, 1326 Army Post Road, Des Moines, Iowa."

\* \* \*

[fol. 15]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

## MOTION FOR A NEW TRIAL

COMES NOW, Harvey Lyle Entsminger and moves the Court for a new trial in the above entitled matter for all of the following reasons, to-wit:

1. That the Court erred in admitting evidence over proper and timely objection which was wholly incompetent and inadmissible under the 4th, 5th, and 14th Amendments to the Federal Constitution.

2. That the evidence referred to in Paragraph One was certain writings in the possession of the defendant which were used to prove or establish the hand writing of the defendant and which were removed from the defendant's person or property over his objection and wholly without his consent.

3. That said evidence was not obtained lawfully from the defendant by search and seizure under the statutes in such cases provided and hence was unlawful and incompetent evidence and inadmissible.

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4. That said writings were foreign to and in no way connected with the crime and were not obtained in any manner connected with the crime or any search to find things connected with the crime.

[fol. 16] 5. That said defendant never consented to use of said writings in any manner and before they are admissible in evidence the record must show a waiver or consent and it must be proven by clear and positive testimony and there must be no duress or coercion actual or implied.

6. That the seizure of a mans private papers to be used in evidence against him is equivalent to compelling him to be a witness against himself and in a prosecution for a crime penalty or forfeiture it is equally within the prohibition of the Fifth Amendment and the search and seizure of his private papers is an unreasonable search and seizure within the Fourth Amendment.

7. That there was no competent evidence as to the uttering of the forged instrument.

8. That the evidence was wholly lacking in establishing beyond a reasonable doubt the identity of the signer of the instrument in question.

9. That the verdict is contrary to the evidence and there is no competent evidence to establish beyond a reasonable doubt the guilt of the defendant.

10. That the State failed utterly to prove beyond a reasonable doubt with admissable evidence the Commission of the crime charged in the indictment.

11. That the verdict is the result of passion and prejudice and too much weight was given to the fact that the defendant had been previously convicted of a felony.

[fol. 17] 12. That the defendant was convicted on his record and not on competent or admissable evidence and was therefore twice placed in jeopardy because of a previous crime.

/s/ Harvey Lyle Entsminger  
Defendant.

/s/ Everett H. Albers  
EVERETT ALBERS

/s/ Henry W. Wormley  
HENRY W. WORMLEY  
Attorneys for said Defendant

[fol. 18]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

NOTICE OF APPEAL TO THE SUPREME COURT

To: HARRY PERKINS, COUNTY ATTORNEY

You are hereby notified that the Defendant herein has appealed to the Supreme Court of Iowa, from the final judgment in this cause and from each and every ruling adverse to the Defendant during the progress and hearing of the said case and that said appeal will come on for hearing in its regular order in said court.

/s/ Henry Wormley  
HENRY WORMLEY,  
Attorney for Defendant  
605 Savings and Loan Building  
Des Moines, Iowa 50309  
243-1188

ACCEPTANCE OF SERVICE

\* \* \*

[fol. 19]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

MINUTE ENTRY OF RELEASE ON BOND WITHOUT SURETY—  
Filed Aug. 6, 1964

Defendant appears in person & with his attorney—  
Deft. released on his own bond without surety.

RAY C. FOUNTAIN, Judge

FILED Aug. 6, 1964.

[fol. 20]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

ORDER APPOINTING COUNSEL AND ENTRY OF PLEA OF  
NOT GUILTY—Sept. 23, 1964

Defendant being in court personally, states that he has no counsel and is without funds with which to employ counsel. He requests that the Court appoint counsel to represent him. The request is granted and E. H. Albers, is appointed to represent defendant.

Defendant present in Court in person and by his Counsel, says he is informed against by his true name, waives formal arraignment and pleads not guilty.

DRING D. NEEDHAM, Judge

FILED 9-23-64

[fol. 21]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

MINUTE ENTRY OF TRIAL—Oct. 2, 1964

Case called for trial in presence of defendant and his counsel. Jury selected and sworn. One alternate Juror selected and sworn. Information read—plea stated & states evidence briefly stated. Defendant waived statement of defense and evidence at this time. Evidence received. Adjourned at 3:52 P.M.

DRING D. NEEDHAM, Judge

FILED Oct. 2, 1964

[fol. 22]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

MINUTE ENTRY OF IMPANELLING OF JURY—Oct. 2, 1964

NOW on this 2nd day of October, 1964, this cause comes on for trial the State appearing by Jack D. Harvey, Assistant County Attorney, and the defendant appearing in court in person and by Everett Albers, his attorney.

To try the issues joined herein, were called, duly and legally impanelled and sworn according to law, a jury of twelve good and lawful jurors as follows, to-wit: Betty Lou Cumings, Margaret L. Backman, Glenn L. Stitzell, Kenneth O. Willis, Leland D. Harvey, Theresa J. Taylor, Richard V. LeCroy, Eunice Mott, Jake Mearl Clarke, Donald L. Timmons, Helen G. Hunter, Jeanette Vignovich.

DRING D. NEEDHAM, Judge

FILED Oct. 2n, 1964.

[fol. 23]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

VERDICT—Oct. 6, 1964

## FORM OF VERDICT NO. 1,

We, the jury, find the defendant, Harvey Lyle Entsminger, guilty of the crime of uttering a forged instrument as charged in the information.

(Signed) DONALD L. TIMMONS, Foreman

## FORM OF VERDICT NO. 2.

We, the jury, find the defendant, Harvey Lyle Entsminger, not guilty.

-----  
foreman

Filed Oct. 6, 1964

[fol. 24]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

MINUTE ENTRY RE WITHDRAWAL OF EXHIBITS—  
Oct. 6, 1964

NOW, on this 6th day of October, 1964, this matter having come before the Court upon the oral application of the County Attorney for the release of Exhibits D, E, F, G, H, and L, which were heretofore received in the evidence on the part of the State of Iowa in the above en-



titled matter, and the Court having examined the records and the file herein and being fully advised in the premises finds that the Jury has returned a verdict of guilty herein and the Exhibits D, E, F, G, H, and L, should be released to the County County of Polk County.

IT IS HEREBY ORDERED that the State's Exhibits D, E, F, G, H, and L, heretofore received in the evidence in this matter be and the same are hereby released to the County Attorney of Polk County and he is directed to take proper safeguard to insure that they will be available to this Court in their present form in any future proceedings which may arise hereunder.

DRING D. NEEDHAM, Judge

FILED Oct. 6, 1964.

[fol. 25]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

MINUTE ENTRIES OF TRIAL

10-5-64. Trial proceeded in presence of defendant & his counsel.—State rested. Record made. Defense evidence received. Defence rested, no rebuttal evidence. Record made. Adjourned. Instructions submitted to counsel.

10-6-64 Instructions in final form submitted to counsel. Court convened in presence of defendant & his counsel. Arguments completed. Record made. Instructions read to jury. Jury retired. Alternate jurors discharged. Case submitted at 11:23 A.M.

10-6-64 At 1:25 P.M. the jury returned a verdict of guilty as charged. Time for pronouncement of sentence fixed for 9:00 A.M. on October 16, 1964.

DRING D. NEEDHAM, Judge

FILED 10-6-64

[fol. 26]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

MINUTE ENTRY RE APPOINTMENT OF COUNSEL—  
Oct. 9, 1964

Defendant in Court personally and requests appointment of counsel to file motion for new trial. The Court will endeavor to obtain counsel who will willingly accept appointment, and defendant will be returned to Court at time appointment is made.

DRING D. NEEDHAM, Judge

FILED Oct. 9, 1964

[fol. 27]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

MINUTE ORDER APPOINTING COUNSEL—Oct. 16, 1964

Defendant in Court personally and by his Counsel and Mr. Henry Wormley is appointed to represent defendant. At defendant's request after short conference with Mr. Wormley that Mr. Albers be retained. At Counsel's request time for the pronouncement of sentence and filing motions is set for 9:00 A.M. on October 23, 1964.

DRING D. NEEDHAM, Judge

FILED Oct. 16, 1964

[fol. 28]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

MINUTE ENTRY OVERRULING MOTION FOR NEW TRIAL,  
SENTENCE, AND APPOINTMENT OF COUNSEL—Oct. 23, 1964

Defendant & counsel in Court personally. Motion for new trial filed and presented to Court. Overruled. Sentence as per written entry filed. At request of defendant, Henry Wormley appointed to prosecute appeal with transcript provided. Defendant requested to remain in Polk County Jail until on or about October 30, 1964 as that physician services be completed on October 28, 1964.

DRING D. NEEDHAM, Judge

FILED Oct. 23, 1964.

[fol. 29]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

[Title Omitted]

SENTENCE—Oct. 23, 1964

NOW, on this 23rd day of October, 1964, the defendant, Harvey Lyle Entsminger, appears in open court in person and with his attorney, Henry Wormley.

The Court finds that on the 6th day of October, 1964, a jury returned a verdict finding the defendant, Harvey Lyle Entsminger, guilty of the crime of Uttering A Forged Instrument, as defined in Section 718.2 of the Code of Iowa 1962, and at that time sentence was set for the 16th day of October, 1964. The Court further finds that on the 16th day of October, 1964, the defendant and his attorney were present in Court and request a defer-

ment of sentence until 9:00 A.M., the 23rd day of October, 1964, which was granted.

This being the date and hour set for sentencing, the Court now proceeds to pronounce sentence.

IT IS THE JUDGMENT OF THE COURT that the defendant, Harvey Lyle Entsminger, be imprisoned in the State Penitentiary at Fort Madison, Iowa, for a term of not more than ten (10) years, as provided for in Section 718.2 of the Code of Iowa 1962. Cost of this action is assessed against the defendant.

Bond on appeal is fixed at \$10,000.00.

To all of which defendant excepts.

DRING D. NEEDHAM, JUDGE

FILED Oct. 23, 1964

[fol. 30]

IN THE DISTRICT COURT OF THE STATE OF IOWA  
IN AND FOR POLK COUNTY

# CLERK'S CERTIFICATE

STATE OF IOWA  
POLK COUNTY, SS:

## CLERK'S CERTIFICATE

I, Michael H. Doyle, Jr., Clerk of the District Court, within and for the County and State aforesaid, do hereby certify the foregoing to be a full, true and complete copy of COUNTY ATTORNEY INFORMATION, MINUTES OF EVIDENCE, BAILIFF'S OATH, STATEMENT AND INSTRUCTIONS, LETTER, 3 SUBPOENAS, MOTION FOR A NEW TRIAL, LETTER, AND NOTICE OF APPEAL, AND 10 ORDERS & JUDGMENT ENTRY in the case of STATE OF IOWA, VS. HARVEY LYLE ENTSMINGER, BEING CRIMINAL NO. 51568, as full, true, correct and complete, as the same remains of record in my office.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 3rd day of December, 1964.

/s/ Michael H. Doyle, Jr.  
Clerk of Said Court.

[fol. 31]

## IN THE SUPREME COURT OF IOWA

### NOTE RE LETTER ACCOMPANYING MOTION FOR BILL OF PARTICULARS

The following letter and accompanying "Motion for a Bill of Particulars" was filed by petitioner in the Supreme Court of Iowa on January 13, 1965:

"To Whom It May Concern: Enclosed you will find *two* copies of a Motion for a Bill of particulars the courts copy as marked, and the attorney General's copy, it is requested this be brought to the courts attention *immediatley* so as to enable me to file an appeal from the court *desieyng* counsel, if I am not allowed *permmision* to raise a point of Law in this matter without taking an appeal or if the attorney General will not give an opinion on this matter. Your *ackk*nnowledgement is requested. I thank you for your time and consideration. Harvey Entsminger."

[fol. 32]

## IN THE SUPREME COURT OF IOWA

### MOTION FOR A BILL OF PARTICULARS

"Comes now your petitioner herein and respectfully represents and states that he is an inmate of the Iowa State Penitentiary, under Register number 28918;

### STATEMENT OF FACTS

That petitioner has been denied the advise of Counsel in a Habeas Corpus proceeding, "wherein" the court granted



a petition for Writ of Habeas Corpus and hearing was held in court on said proceeding.

Where a hearing is granted on a petition for Writ of Habeas Corpus to deny a poor person the advice of counsel, is denying him "due process of Law".

That Habeas Corpus is a civil action and petitioner should be allowed to raise a point of Law without taking an appeal from the Court denying counsel.

Wherefore, petitioner ask for an immediate order allowing petitioner to file argument in the Supreme Court, to merely determine as to *weather* or not it is due process of Law to refuse Counsel to a poor person when a hearing has been granted on a Habeas Corpus.

That if petitioners request to file argument to raise a point of Law is refused by this Court, the Attorney General, should be obligated to give a ruling as to *weather* a poor person is entitled to counsel when a Habeas Corpus proceeding is granted.

That petitioner has this day caused a copy of the above and foregoing Motion to be mailed to the Clerk of the [fol. 33] Supreme Court and Attorney General of Iowa.

That petitioner is a poor person and cannot properly prosecute this action unless granted permission to proceed in Forma Pauperis:

Respectfully Submitted

signed HARVEY ENTSMINGER"

Subscribed and sworn to before me at my office at Fort Madison, Iowa, this \_\_\_\_\_ day of January, 1965.

(s) RALPH D. MOEHM Notary Public in and for Lee County, Iowa. My commission expires July 4, 1966."

[fol. 34]

## IN THE SUPREME COURT OF THE STATE OF IOWA

HARVEY ENTSMINGER, PETITIONER

vs.

ATTORNEY GENERAL, STATE OF IOWA, RESPONDENT

---

ORDER DENYING MOTION FOR A BILL OF PARTICULARS  
January 15, 1965

This paper has been duly considered by the court and  
the application is hereby denied.

THE SUPREME COURT OF IOWA

(s) T. G. GARFIELD  
Chief Justice

\* \* \*

[fol. 35]

IN THE SUPREME COURT OF THE STATE OF IOWA

[Title Omitted]

NOTICE OF INTENTION TO FILE PRINTED ABSTRACT OF  
RECORD

To: LAWRENCE SCALISE, ATTORNEY GENERAL

You are hereby advised that the Defendant desires to submit the above entitled case upon a printed abstract of record and brief and argument.

Dated at Des Moines, Iowa, this 8th day of March, 1965.

/s/ Henry Wormley  
HENRY WORMLEY  
Attorney for Appellant  
605 Savings and Loan Building  
Des Moines, Iowa 50309  
243-1188

ACCEPTANCE OF SERVICE

The undersigned hereby accepts service of the above and foregoing Notice and acknowledges receipt of a copy thereof.

ATTORNEY GENERAL

By /s/ L. F. Scalise  
Attorney General

[fol. 36]

## IN THE SUPREME COURT OF IOWA

-[Title Omitted]

## ORDER REGARDING SUBMISSION OF APPEAL—

March 11, 1965

Submission of the appeal in the above entitled case on clerk's transcript is hereby set aside on the court's own motion and IT IS ORDERED that the appeal be submitted on printed abstract, briefs and arguments pursuant to notice by counsel for appellant filed with the clerk of this court on March 8, 1965.

However, this order is without prejudice to right of the attorney general, if so advised, to move to dismiss the appeal for failure to file the abstract of record within the time provided by Court Rule 16, page 2716, Iowa Code 1962.

DONE this 11th day of March, 1965.

THE SUPREME COURT OF IOWA

/s/ T. G. Garfield  
Chief Justice



[fol. 37]

IN THE SUPREME COURT OF THE STATE OF IOWA

[Title Omitted]

PETITION FOR WRIT OF CERTIORARI

Comes now Harvey L. Entsminger, Plaintiff herein and presents this his petition for Writ of Certiorari directed to the District Court of Iowa in and for Polk County at Des Moines, Iowa, and for cause States whereas:

1) Plaintiff was arrested by City official's at Des Moines, Iowa, on or about June 12, 1964, on an alleged charge of Forgery. (no warrant issued for Plaintiff's arrest).

2) On or about the 13, day of June, 1964, Plaintiff was charged in the Municipal court at Des Moines, Iowa, with the aforesaid charge of Forgery.

3) On or about the 28, day of June, 1964, aforesaid charge of Forgery was dismissed in the Municipal Court at Des Moines, Iowa, on the grounds that the State failed to prove Plaintiff had committed a Forgery.

4) On or about the same 28, day of June, 1964, Plaintiff was charged with a crime of uttering an Forgered Instrument.

5) In the first part of Aug. 1964, Plaintiff was Bound over to the District Court On aforesaid charge of uttering a forgered Instrument.

6) On the 21, day of Sept, 1964, Plaintiff was arrested at 906 Randolph, st. in Des Moines, Iowa, and informed by Mr. Marohn, the arresting officer that Plaintiff was wanted down town.

7) Plaintiff was not informed that the he had been indicted on specific charge of uttering an forgered Instrument until Plaintiff had arrived at the Jail with the arresting officer, Mr. Marohn.

8) Mr. Marohn, the arresting offericer testified on record that he did not addentifie himself at the time of arrest and that he didnot have a warrant in his possession for the arrest of Plaintiff.

9) On Oct, 6, 7, 8, Mr. Albert, an attorney, at law represented Plaintiff at his jury trial in the District Court of Iowa in and for Polk County at Des Moines, Iowa.

10)b During aforesaid dates Mr. Albert, Plaintiff's [fol. 38] Court appointed attorney objected to the state using Plaintiff's private paper's on grounds of illegaj search and seizure.

11) On the same 6, 7, 8, days of Oct, 1964, during Plaintiff's jury trial Mr. Albert, Plaintiff's Court appointed attorney didnot object to any of the states questioning of witnesses.

12) On or about the 16, day of Oct, 1964, Plaintiff requested that mr. Albert, Plaintiff's attorney, be dismissed and that Plaintiff be appointed a new attorney to assist in the filing of a motion for new trial.

13) On or about the 23, day of Oct, 1964, Mr. Wormley, a Court appointed attorney filed a motion for new trial in Plaintiff behalf.

14) On or about the 23, day of Oct, 1964, the District Court of Iowa in and for Polk County at Des Moines, Iowa denied Plaintiff's motion for new trial.

15) On the same 23, day of Oct, 1964, Plaintiff requested that his case be appealed to the Iowa Supreme Court and the Court appointed Mr. Wormley, to file appeal in Plaintiff's behalf, to a Complete conclusion with the presentation of records with Brief and arguement in Plaintiff behalf.

16) On the 9, day of March, 1965, Mr. Wormley, Informed Plaintiff when he had completed the record and brief and arguement such would be forwarded to Plaintiff. (see exhibit (one)

17) On the 1, day of Sept. 1965, Mr. Wormley, Informed Plaintiff there would be nothing fijed in Plaintiff's behalf except the record of the case. see: (exhibit (two)

18) That Plaintiff had ineffective assistance of Counsel at his jury trial.

19) That the District Court of Iowa in and for Polk County at Des Moine Iowa acted illegally and in disregards to mandates of the United States Supreme Court by admitting Plaintiff's private papers into evidence.

20) That plaintiff has ineffective assistance of counsel on the one appeal Plaintiff has as of a right.

Wherefore, Plaintiff requests this court to issue a Writ of Certiorari directed to the District Court of Iowa in and for Polk County at Des Moines, Iowa, commanding such court to transmit the certified records in the case State of Iowa v. Harvey L. Entsminger, case No. 51568 criminal, to the clerk of the Iowa Supreme Court forthwith, that this court may review the records and determine therefrom whether or nor Plaintiff in being denied due process of law or has been denied due process of law or equal protection of the laws under the provision of the 14, amendment of the constitution of the United States, sec. 1., thereof.

Respectfully Submitted

/s/ Harvey Lyle Entsminger

[fol. 39]

State of Iowa )  
County of Lee ) ss.

The foregoing Petition for Writ of Certiorari was subscribed and sworn to before mw. this 8th day of Oct, 1965, in my office at Fort madison, Iowa, by the Plaintiff Harvey L. Entsminger.

/s/ Ralph D. Moehm  
Notary Public in and for Lee County,  
Fort Madison, Ia.  
My Commission Expires: July, 1966,

[fol. 40]

## EXHIBIT "1" TO PETITION

Law Office  
Henry Wormley  
605 Savings and Loan Building  
Des Moines, 9, Iowa

March 9, 1965

Telephone  
Office C H 3 1188  
Home BL 5 5177

Mr. Harvey Entsminger  
No. 28918  
Box 816  
Fort Madison, Iowa

Dear Sir:

This will acknowledge your letter of March 2, 1965, in which you have set forth a multitude of ramblings which have no foundation, do not make good sense, and do not relate to the point where they are entitled to the dignity of an answer; hence, I ignore the same with the above passing remarks.

Your case was appealed to the Supreme Court and as soon as I receive the transcript from the Court Reporter, then I will make the record.

I am nor unmindful of the time that pasts and the rules of the Supreme Court. As to how I present this case and what I put in the Brief and arguement will be matters that I will pass upon accordingly to my best Judgment.

As I told you before, you should desist from filing silly petitions that get you nowhere. however, if it will give you any confort, file any that you want to. When the papers have been prepared, they will be forwarded and I do not have the time to write you as to every move that I make in this case.

The records, When completed, Will show what has been taken care of.

Very Truly Yours,

Signed: HENRY WORMLEY.

HW:mt



[fol. 41]

## EXHIBIT "2" TO PETITION

Law Office  
Henry Wormley  
605 savings and loan Building  
Des Moines 9, Iowa

Mr. Harvey Entsminger  
No. 29918  
Box 316  
Fort Madison, Iowa

Dear Mr. Entsminger,

This will acknowledge your letter of recent date. I have received the correspondence from Judge Garfield and as you were informed by him, you would have to bring any habeas corpus proceeding in Lee County and I will not conduct the matter for you.

A habeas corpus cannot take the place of an appeal and is not for the purpose of retrying your case. I am the third lawyer who tried to do something for you and you are unhappy with all lawyers no matter who they are. This is the third time you have been confined and you apparently want to get out. I don't blame you for that, but would suggest that when you do, just conduct yourself properly and you will remain on the outside.

The printed abstract reveals that you admitted to the detective that you had been drinking and wrote several checks. You also voluntarily signed a signature card and consented to the detective taking your papers. This is not what you told me but of course, it is still the record.

I am of the opinion that there is evidence from which a jury could find you guilty. In addition to that, you voluntarily took the witness stand and so we have no complaint in that area.

The Supreme Court under the law examines the record without regard to technical errors or defects and gives such judgement on the record as the law demands. These gentlemen are better versed in the law than I am and will, I am sure, give you a fair decision. Of course, if

they rule against you, they will be like myself—on your bad list.

I told you before that you better make a good record in the Fort so you can get your good time. You can received a lot of advice down there and as I told you, it is worthless. If your advisers are so wise, why are they down there%

You keep referring to conflicts you have had with me which of course is untrue. There are none and you imagine this with all lawyers. Your case will be tried on the record and not on any personal feelings of anyone. Cases are tried on the evidence presented in court at the trial and your record in the case was made before I ever got into it. I am sure the Supreme Court is not interested in any filings you may desire to make as they have nothing to do with your case, except on appeal.

If it will make you happy, go ahead and file a habeas corpus proceedings in the Lee County Court. It won't do you any good but maybe you will get some satisfaction out of it. I trust this answers your inquiry.

Very truly yours,

HENRY WORMLEY

HW. mt

[fol. 42]

IN THE SUPREME COURT OF THE STATE OF IOWA

[Title Omitted]

ORDER DENYING PETITION FOR WRIT OF CERTIORARI—  
Oct. 18, 1965

Petition considered and denied on the ground it is not filed within the time provided by Rule 319, Rules of Civil Procedure.

THE SUPREME COURT OF IOWA

(s) T. G. GARFIELD, Chief Justice

[fol. 43]

IN THE SUPREME COURT OF IOWA  
SEPTEMBER TERM 1965

156  
51671

STATE OF IOWA, APPELLEE

v.

HARVEY LYLE ENTSMINGER, APPELLANT

Appeal from Polk District Court—Dring D. Needham,  
Judge.

Henry Wormley, of Des Moines, for appellant.

Lawrence F. Scalise, Attorney General, and Don R.  
Bennett, Assistant Attorney General, for appellee.

PER CURIAM—October 10, 1965

Defendant was charged by county attorney's information with the crime of uttering a forged instrument as defined in section 718.2, Code 1962. He pleaded not guilty, was tried before court and jury, found guilty and was sentenced to an indeterminate term not to exceed ten years in the men's penitentiary at Fort Madison. Defendant's appeal comes to us upon a clerk's transcript which includes the trial court's instructions to the jury. Our study of the record before us discloses no error. The judgment is—Affirmed.

[fol. 44]

NOTE RE FILING OF TRIAL TRANSCRIPT AND  
TRANSCRIPT OF SUBSEQUENT PROCEEDINGS

Petitioner is depositing with the Clerk of the United States Supreme Court a transcript of the trial (Exhibit A) and a transcript of a subsequent hearing (Exhibit

B). Although these documents were not before the Supreme Court of Iowa at the time it affirmed Petitioner's conviction, Petitioner feels they should be available for the Court's inspection because they are essential to raise accurately Petitioner's search and seizure claim, arising under the United States Constitution, and necessarily passed upon by the Supreme Court of Iowa, and because they are essential to show the activities of record of the trial court, of counsel, and of Petitioner in regard to the appealing of Petitioner's conviction to the Supreme Court of Iowa.

[fol. 45]

## IN THE SUPREME COURT OF IOWA

\* \* \* \*

### CERTIFICATE

ENTSMINGER, PETITIONER,

vs.

THE STATE OF IOWA, RESPONDENT.

### CERTIFICATE TO RECORD

I, HELEN M. LYMAN, Clerk of the Supreme Court of the State of Iowa, certify that this Record, in parts I through VIII, accurately sets forth or summarizes all documents and papers filed in the Supreme Court of the State of Iowa in and relating to Cause No. 9-51671, State v. Harvey Lyle Entsminger, and that the document referred to in Part IX of this Record, nor any abstract or summary thereof, has ever been filed in the Supreme Court of the State of Iowa.

/s/ HELEN M. LYMAN  
HELEN M. LYMAN, Clerk  
Supreme Court of the State  
of Iowa  
Des Moines, Iowa

[SEAL]



[fol. 46]

**SUPREME COURT OF THE UNITED STATES**

**No. 1012 Misc., October Term, 1965**

**HARVEY LYLE ENTSMINGER, PETITIONER,**

**v.**

**IOWA**

**On petition for writ of Certiorari to the Supreme Court  
of the State of Iowa.**

**ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN  
FORMA PAUPERIS AND GRANTING PETITION FOR WRIT  
OF CERTIORARI—June 20, 1966**

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1434, placed on the summary calendar, and set for oral argument immediately following No. 1181.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.